

The Honorable Pete Stark
Extension of Remarks
September 19, 2012

Introduction of the Medicare Secondary Payer and Late Enrollment Penalty Family Fairness Act

Mr. Speaker, I rise to introduce *the Medicare Secondary Payer and Late Enrollment Penalty Family Fairness Act*. Today, the Social Security Act uses different definitions of familial relationships for purposes of Medicare secondary payer rules and late enrollment penalty protections. Beneficiaries over age 65 are subject to a more restrictive definition than younger beneficiaries who are eligible for Medicare due to disability. My legislation fixes that anomaly by creating a uniform definition so that Medicare beneficiaries of all ages are treated equally. I would like to thank my constituent, Joseph Goleman, for bringing this problem to my attention.

Medicare's secondary payer rules generally allow an individual to maintain employer-sponsored coverage after they've obtained Medicare eligibility and forgo joining Medicare Part B (and therefore having to pay the Part B monthly premium) as long as they maintain such coverage. In these instances, their employer-sponsored coverage remains their primary coverage, and Medicare Part A is their secondary coverage. Very importantly, the law also protects people in this situation who then transition to Medicare Part B when they lose that employer-sponsored coverage. The law shields these beneficiaries from the late enrollment penalty because they've maintained consistent coverage and therefore carry no adverse risk for Medicare. This is a key benefit as the late enrollment penalty is a substantial financial hit.

These rules exist because they are a win for beneficiaries with access to employer-sponsored coverage and a win for taxpayers. Beneficiaries gain because employer-sponsored coverage usually has lower cost sharing than Medicare and typically has lower deductibles as well. Plus, taxpayers win because Medicare isn't responsible for many new health costs for these individuals because they are being primarily covered by their employer's plan.

For people who become eligible for Medicare based on disability, the current law provides that these Medicare Secondary Payer and Late Enrollment Penalty rules apply to the beneficiary and his or her "family member." For people who become eligible for Medicare by reason of

turning 65, these protections only apply to the beneficiary or their “spouse.”

The practical impact of these different definitions of familial relationships is that a person eligible for Medicare based on disability is protected from late enrollment penalties when covered by a same sex spouse on his or her employer plan. However, a person eligible for Medicare because they’ve turned 65 is not.

I learned of this problem after I received a constituent inquiry in my Fremont, California office. Joseph Goleman is a 34-year-old person with a disability and is enrolled in Medicare on that basis. After becoming enrolled in Medicare, he learned that he could obtain spousal coverage and thereby avoid having to pay the Part B premium. He was also rightly informed that he’d be eligible to rejoin Medicare Part B -- without paying a penalty -- if that spousal coverage changed.

Imagine Joseph’s surprise, anger, and fear when he went to exercise that right to rejoin Medicare Part B and he was told by a local Social Security office in our community, that that right didn’t extend to him because he was in a same-sex marriage. Instead, he would be subject to a significant late enrollment penalty, which made Medicare Part B coverage entirely unaffordable for him.

Thankfully, Joseph reached out to me. My staff quickly discovered that he was, in fact, guaranteed the protection to rejoin Medicare without penalty. After several go ‘rounds with the local Social Security office by my staff and Medicare’s Region 9 staff, we were able to get Joseph the benefits to which he was due. However, it is clear to me that because there are two different standards in the law, mistakes are made and people are likely losing benefits to which they are entitled under current law. This certainly would have been the case with Joseph if I hadn’t intervened.

Regardless of your position on same-sex marriage, revising the law to have a standard definition using “family member” for the Medicare secondary payer rules and the late enrollment penalty protection simply makes financial sense for Medicare. By converting to the term “family member,” we steer clear of stepping into any debate over the Defense of Marriage Act. While I oppose that law and would strongly support its repeal, that’s not the fight we’re waging today.

The simple goal of this bill is to right a wrong, which was brought to my attention by a constituent. If left unchanged, not only does the law treat Medicare beneficiaries in identical situations differently, it obviously results in confusion for those who enforce the law. I am sure more people than Joseph Goleman have been wrongly denied benefits based on misinterpretation of the convoluted law -- potentially accentuated by personal prejudices.

I urge my colleagues to join with me in support of this small bill that affects few people, but simply clarifies the law. It will mean the difference between people obtaining quality, affordable coverage through Medicare Parts A&B, or being left behind.